

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WENDELL TERRY NELSON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
vs.)	NO. CIV-12-0008-HE
)	
B. BARTON, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiffs, California prisoners appearing *pro se*, filed this § 1983 action “to redress a continuous patten of deprivations.” Complaint, p. 1. They claim that because they are Muslim defendants have discriminated against them, infringed on their religious freedoms, subjected them to cruel and unusual punishment and denied them access to the courts. Plaintiffs have filed a motion seeking a determination that the lawsuit may proceed as a class action.

The matter was referred to Magistrate Judge Bana Roberts pursuant to 28 U.S.C. § 636(b)(1)(B) for initial proceedings. She has issued a Report and Recommendation regarding plaintiffs’ motion for class certification, suggesting that it be denied. Plaintiffs Nix, Siebert, Bolton, Wright and Dotson have filed objections.


The magistrate judge found that plaintiffs’ motion failed to address or satisfy any of the Fed.R.Civ.P. 23(a)’s prerequisites for class certification. Citing Fymbo v. State Farm Fire & Cas. Co., 213 F.3d 1320(10th Cir. 2000), she also concluded that, because plaintiffs are *pro se*, they cannot adequately represent the class.

The Tenth Circuit held in Fymbo that “[a] litigant may bring his own claims to federal court without counsel, but not the claims of others.” *Id.* at 1321. The case precludes plaintiffs, or any one of them, from being the class representative. Without a class representative the case cannot proceed as a class action. Therefore, Magistrate Roberts’ Report and Recommendation is adopted and plaintiffs’ motion for class certification is denied.

The court clerk is directed to mail a copy of the complaint, Doc. #1 to plaintiff Nix.

IT IS SO ORDERED.

Dated this 10th day of April, 2012.



JOE HEATON
UNITED STATES DISTRICT JUDGE